

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION**

DANIEL BRYAN KELLY,

Plaintiff,

VS.

RICKY OWENS, et al.,

Defendants.

CIVIL ACTION NO.: 2:05CV1150-M

DEFENDANT AL BRADLEY, TERRY WILSON, AND WENDY ROBERSON’S
MOTION TO DISMISS CLAIMS AGAINST THEM IN THEIR OFFICIAL
CAPACITIES AND EIGHTH AMENDMENT CLAIMS AGAINST THEM

COME NOW, Al Bradley, Terry Wilson, and Wendy Roberson, Defendants in the above-styled action, and move this Court to dismiss the Plaintiff's claims against them in their official capacities, pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted, and for dismissal of the Plaintiff's Eighth Amendment Claims against them. As grounds therefore, the Defendants state as follows:

1. The Plaintiff filed his Amended Complaint on May 22, 2006, alleging violations of his Eighth and Fourteenth Amendment Rights pursuant to 42 U.S.C. §1983. The Plaintiff's lawsuit names these Defendants in their official, as well as individual capacities.

2. The Plaintiff's claims against Defendants Al Bradley, Terry Wilson, and Wendy Roberson in their official capacities are due to be dismissed for lack of subject matter jurisdiction.

(a) All official capacity claims under 42 U.S.C. §1983 against these Defendants are due to be dismissed due to lack of subject matter jurisdiction pursuant to the Eleventh Amendment to the United States Constitution.

(b) Further such official capacity claims are due to be dismissed for failure to state a claim upon which relief can be granted as these Defendants are sued in their official capacities, are not “persons” for purposes of 42 U.S.C. §1983.

3. The Plaintiff’s Eighth Amendment Claims are due to be dismissed as the Plaintiff was a pretrial detainee.

WHEREFORE, THE ABOVE PREMISES CONSIDERED, Defendants Al Bradley, Terry Wilson, and Wendy Roberson move this court to dismiss the claims made against them in their official capacities for failure to state a claim upon which relief can be granted and to dismiss the Plaintiff’s Eighth Amendment Claims made against them and grant unto them costs and attorney’s fees pursuant to 42 U.S.C. §1983.

Respectfully Submitted this the 2nd day of June, 2006.

/s/ Kristi A. Dowdy

KRISTI A. DOWDY

ALA. BAR NO.: ASB-4760-W86K

ATTORNEY FOR Al Bradley, Terry Wilson
& Wendy Roberson

OF COUNSEL:

McDONALD & DOWDY
1005 Montgomery Highway
Birmingham, Alabama 35216
(205) 824-0507 - telephone
(205) 824-0509 - facsimile

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of June, 2006, I did electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of said filing to the following CM/ECF participants:

Gary L. Willford, Jr., Esquire
Webb & Eley, P.C.
7475 Haleyon Pointe Road
Post Office Box 240909
Montgomery, Alabama 36124

Richard J. Stockham, III, Esquire
Stockham, Carroll & Smith, P.C.
2400 Lakeshore Drive, Suite 114
Birmingham, Alabama 35209

Alex L. Holtsford, Jr., Esquire
Rick A. Howard, Esquire
Nix, Holtsford, Gilliland,
Higgins & Hitson, P.C.Z
Post Office Box 4128
Montgomery, Alabama 36103-4128

/s/ Kristi A. Dowdy

KRISTI A. DOWDY